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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,
Plaintiff,

vs. CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

VIDEOTAPED DEPOSITION OF STEVE THOMPSON
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 7, 2009, BEGINNING AT 9:30 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

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Scott McDaniel
MCDANIEL, HIXON, LONGWELL & ACORD

EXHIBIT
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identification)

Q. This is Exhibit 14, Mr. Thompson. We are not going to read everything in it --

A. That's good.

Q. So I'm not going to ask you to read the whole document, but if you want to take a moment to look at it so you understand what the document is, I would appreciate it.

A. Appears to be a QA project plan for a TMDL on the Illinois River and the Lake Tenkiller.

Q. Okay. Generally a Q-A-A-P, a QAAP, Quality Assurance Project Plan, generally, what is a Quality Assurance Project Plan?

A. It is a document that assures quality work in the implementation and testing and monitoring necessary to do any project, it is a quality assurance plan, similar to many other quality assurance plans.

Q. Is a QAAP a necessary part of Oklahoma's TMDL water quality work?

A. Yes.

Q. And Oklahoma Department of Environmental Quality would not undertake this type of work without a QAAP, would it?

A. No, we would not.

Q. In my review of documents, which I'm not

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going to represent to you is exhaustive, but this is the first TMDL project package that, for the Illinois River Watershed that I saw, and this is dated May 15th, 2003.

Are you aware of any project package for the Illinois River TMDL that may predate this?

A. No.

Q. If you flip into the document, and I'm referring to the page numbers at the top, page 2 of 20?

A. Page 2 of 20?

Q. Yes, sir.

A. Okay.

Q. All right. On the last paragraph, let me read this statement, it says, "The first step in the restoration of such a waterbody consists of conducting a total maximum daily loading study to develop the state's watershed restoration assessment strategy for this waterbody."

Do you agree with that statement?

A. I agree with the statement, yes.

Q. And reviewing this, it appears that this TMDL study was going to be accomplished in part by making use of computer simulations prepared by Dr. Storm of Oklahoma State University?

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A. That's correct.

Q. Let's turn to page 4 of 20. In the middle -- page 4 of 20, just below number 6, the paragraph that begins, there it says, "It is recognized that surface water, non-point source water quality modeling and monitoring have fundamental uncertainties because of the high transient and diverse phenomena involved. The precision and accuracy that can be obtained are not as good as that can be attained for some other types of environmental models, such as groundwater models of conservative substances."

Do you agree, Mr. Thompson that surface water, non-point source water quality models have significant uncertainty?

A. That the models do?

Q. Yes, sir. Modeling output.

A. They have fundamental uncertainties. There are other methods that are more certain.

Q. Okay. But models nonetheless can be useful in making watershed management decisions?

A. They can.

Q. Is that one of the reasons why DEQ uses models in developing total maximum daily loads?

A. That's one of the reasons.

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A. That's correct.

Q. Dated May 7th, 2003. This came from ODEQ files.

A. Uh-huh.

Q. And Ms. Wasinger states, "Attached please find the letter from EPA Region 6 regarding the Quality Assurance Project Plan for the above referenced grant project. EPA completed their review and subsequently approved ODEQ's advised QAAP submitted May 19th, 2003."

And then attached to it is, what, what is that from the EPA?

A. It is a letter from EPA to, back to Ms. Wasinger, stating that the QAAP has been approved.

Q. All right. When ODEQ gets an approval from the EPA on a QAAP, does that mean you can then proceed with the work?

A. It means we can, yes.

Q. Did this EPA approval of this QAAP in May of 2003, did that lead to the development of the TMDL for the Illinois River and Lake Tenkiller?

A. It led to the development of a draft TMDL.

Q. When was that draft prepared?

A. I don't recall. Hold on. Is it me, am I rocking?

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(Defendant's Exhibit 16 marked for identification)

Q. All right, sir, here is Exhibit 16. Again, a transmittal it appears to me from Ms. Hershey to Ms. Wasinger, July 29th, 2004. Do you know why there's been a new QAAP?

A. No, I do not.

Q. Look at page 3, if I may assist you in answering questions. There is discussion about utilizing an HSPF model for the TMDL for Tenkiller Ferry Lake, and it also discusses utilizing Tetra Tech as one of the service providers here.

A. Uh-huh.

Q. Can you tell me, sir, what happened to the work plan that was going to employ the modeling work of Dr. Storm and now we are discussing different models and different contractors? What is going on?

A. I don't know.

Q. During --

A. I don't know.

Q. During the course of this period, 2004, how intimate was your involvement in the Illinois River Watershed TMDL process?

A. Not intimate.

Q. Who would be -- who would you point to as

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being the person within ODEQ with their finger on the pulse of this project?

A. Jon Craig. But there were -- well. As to the process, as to the TMDL process, Jon would be the one.

Q. I'm sorry, I wasn't quite finished with that.

A. I'm sorry.

Q. If you would turn to page 6 of 31. There is some -- there is a project schedule laid out here, and under task 6 it says, "Prepare TMDL end points for nutrient loading from the Illinois River and Barren Fork Watersheds as inputs to the Tenkiller Ferry Lake by November of 2004. Do you know if that benchmark was met?

A. I do not.

Q. All right, set that aside.

A. This one?

Q. Yes, sir. All right. I handed you Exhibit 17, again, another transmission from Ms. Wasinger to Ms. Hershey, this one dated September 6, 2004. This one states, "Attached please find the letter from EPA Region 6 approving the Quality Assurance Project Plan entitled, Review of Monitoring and Assessment Data to Support Development of TMDL for Lake Tenkiller and the

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Illinois River Watershed."

And does it appear that the approval from US EPA dated September 15th, 2004 is attached?

(Defendant's Exhibit 17 marked for identification)

A. It does.

Q. Did this approval of a QAAP result in a TMDL being completed for the Illinois River Watershed?

A. Not that I'm aware of.

Q. What is the status of the TMDLs for the streams and Lake Tenkiller in the Illinois River Watershed?

A. It remains in draft.

Q. Why is that?

A. Somewhere during this time period, it came to my attention that process by which TMDLs were done and load allocations were made using the TMDL process might produce an answer, where there was an unfair allocation given to point sources.

And that had to do not with the TMDL process itself, or with the QAAP, or with anything else, but with the way that the Water Board determines water quality standards. It has something to do with the water quality standards.

And I am not, I am certainly in favor -- and

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it has to do with flow. And while I am certainly in favor of an equitable process for allocations of load between point sources and non-point sources, I am not in favor of an inequitable process.

And so I asked Jon Craig, our Water Quality Division Director, to take that issue up with the Oklahoma Water Resources Board, and to the best of my knowledge, that discussion, I haven't checked on it in a while, probably I should.

But until I'm satisfied that there is an equitable distribution of the load between point sources and non-point sources, I'm going to be uncomfortable with the results.

It was at that time that I, while we had a lot of TMDL work that needs to be done, to the best of my knowledge, that TMDL work has been done in watersheds where there are only non-point sources of pollution, where this issue doesn't arise.

So, we went forward with TMDLs in watersheds where there were only non-point sources or where there was, where an industry or a municipality needed to do a TMDL, often they were the contractors on the TMDL to allow an increase in their discharge, to determine if there was sufficient room within the standard to allow an increase in either flow or concentration.

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So that was -- that was my decision. Until I'm, my people can tell me that they feel that -- not being a scientist, that that distribution is appropriate, that will be our position.

Q. Where is the difficulty arising? Is it in the way the water quality standard is drafted, or is it in --

A. When you take readings, you take readings at, under the current process at high temperature and low flow. I mean, it is clear the impacts from non-point sources, irrespective of the source, whether they are my sources or somebody else's sources, sources that I have jurisdiction over or somebody else have, occur at high flow.

And so there has to be some -- it seems to me, common sense dictates to me as a non-scientist, that there has to be some accommodation to that idea.

Q. It sounds like, if I'm hearing what you're saying, that part of the problem is the way the standard is set up, if the standard is going to be based on low flow samples, you believe the result is inequitable?

A. I think it is biased toward non-point sources.

Q. Okay.